UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:03CR706 CDP
	)	
ARNELL LAMONT DICKENS, JR.,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

Defendant Arnell Lamont Dickens, Jr. filed a motion for a reduction in sentence on November 12, 2008, asking that his sentence be reduced under 18 U.S.C. § 3582. He argues that Amendment 709 to the United States Sentencing Guidelines, relating to calculation of criminal history, should be applied retroactively to his case.

Dickens admits that the Sentencing Commission has not made this amendment retroactive, but urges me to apply it retroactively because, he says, it is a "clarifying" amendment. In making this argument, he confuses the authority of a District Court to change a final sentence with standards that might be applied by a Court of Appeals on direct appellate review.

Absent statutory authority, a District Court cannot reduce a final sentence. Section 3582(c) of Title 18 provides authority for the court to do so under very

limited circumstances. One of those circumstances allows the Court to reduce the sentence "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . " Section 1B1.10 sets out the circumstances under which a guideline change can be applied retroactively. Amendment 709 is not one of the amendments listed under that section. Because the Sentencing Commission has not listed it under that section, I have no authority to reduce defendant's sentence further.[1] Accordingly,

IT IS HEREBY ORDERED that defendant Arnell Lamont Dickens' motion for retroactive application of sentencing amendment 709 [#572] is denied.

_____
CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 12th day of December, 2008.

_____

[1]In June of this year I granted Dickens' motion to reduce his sentence because of the new crack cocaine guidelines, but that guideline change was retroactive, so I had authority to do so.